IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1776 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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SHRI SHIVPRASAD SEVA MANDAL & 1 - Applicant(s)
Versus
THE STATE OF GUJARAT & 7 - Respondent(s)

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Appearance :
MR GT DAYANI for Applicant(s) : 1 - 2.MR NL RAMNANI for Applicant(s) : 1 - 2.
MR KT DAVE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
None for Respondent(s) : 2 - 8.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 19/09/2007

ORAL JUDGMENT

1. By way of this petition, under Articles 226 and 227 of the Constitution of India, the petitioners

– original accused have prayed for an appropriate order to quash and set aside the order dated 11.05.2007 passed by the learned Chief Metropolitan Magistrate, Ahmedabad in Criminal Misc. Application No.191 of 2006.

2. One Bombay based company 'Venus Life Marketing' was floated in the year 2000 and its activities were in different States including State of Gujarat. Amongst various branches the company started functioning from one of its branch office situated in Kutch District at Gandhidham and Bhuj. The said company was engaged in the business of various projects including development of land. The said company appointed agency in a chain system and agents were collecting deposits from the local investors and against the investments made by the investors through appointed agents of the company, the company issued preferential shares for term of one year. That the agents in Kutch District collected huge amount from the local investors from the Kutch District for the said Company against which the company had issued preferential shares as per their

investments. However, the company did not repay the deposits and misappropriated the amount of more than Rs.3 Crores and criminal complaint came to be filed. That the company was owner of land bearing survey No. 54 ad-measuring 19100 Sq.yards situated at Village - Antanjar having 237 plots including 5 to 7 plots with construction over it and 16 shops in 13 segments. The investigation was handed over to C.I.D., Crime, Gandhinagar. It appears that one 'Shri Shiv Prasad Seva Mandal Trust' was registered under the Bombay Charitable Trust. According to the trustees, the object of the trust was to liquidate the property consisting of open plot situated at Survey No.54, Anterjar, and distribute the same to the investors of the Kutch District who have invested their savings in the said Company and from the said money the said company had purchased the above land and started the project viz. 'Vinus Life Nagar'. That during the course of the investigation the office of DGP, Economic Cell has communicated to the office of Sub-Registrar of Kutch District to freeze the above immovable property till the decision on the present complaint. That thereafter, petitioner No.2 being one

of the trustee of the above trust and accused in Criminal Case No.280 of 2006 preferred Special Civil Application No.24853 of 2006 before this Court for the relief relating to sell out the property in one unit and disburse the amount amongst the shareholders in the proportionate ratio as per their entitlement. The petitioners did not press the said petition with a view to resort to appropriate proceedings against the order passed by the CID Crime for freezing of the transaction or prohibiting registration of the documents. Therefore, the petitioners submitted Criminal Misc. Application No. 191 of 2006 in the Court of learned Chief Metropolitan Magistrate, Ahmedabad to de-freeze immovable property i.e. open plot being Survey No.54(paiki) situated at Village – Antanjar, Taluka - Gandhidham, District – Kutch and permit to sell the said plot as one unit and distribute the amount realized amongst small investors of Kutch District. Notice was issued to the CID Crime, Economic Cell, Gandhinagar as well as to Pradeep Vadilal Sanghvi, Vadilal Rantanshi Sanghvi and Dharmendra Vadilal Sanghvi and some of the investors who were objecting to the aforesaid

application and selling the property as one unit by clubbing entire land together. After considering the rival submissions, learned Chief Metropolitan Magistrate, Ahmedabad rejected the said application by submitting that it is not possible to sell the entire land/property as one unit by clubbing the entire land together as it is likely to further complicate issues and there are dispute with regard to ownership of land / plots. Being aggrieved and dissatisfied with the impugned order dated 11.05.2007 passed by the learned Chief Metropolitan Magistrate, Ahmedabad in rejecting the Criminal Misc. Application No.191 of 2006 submitted by the petitioners, the petitioners preferred the present application under Articles 226 and 227 of the Constitution of India.

3. Mr.Dayani, learned Advocate appearing on behalf of the applicants has vehemently submitted that the learned Chief Metropolitan Magistrate, has erred in rejecting the application and not granting permission to sell the property in question as one unit. It is submitted that if property in question is ordered to be de-freezed and sold as one unit, amount

realized would be appropriately / disbursed amongst small investors which would be in the interest of small investors. Therefore, the learned trial Court ought to have granted permission as prayed for by de-freezing the property in question. It is further submitted that learned Chief Metropolitan Magistrate, has committed serious error in not appreciating the fact that this was bona-fide attempt on the part of petitioner No.2 to get money refunded to all these investors and as such in terms and conditions including condition of reporting the matter back to the Court and/or under the supervision of the Court would have been just and fair in the larger interest of the persons whose money was invested. Under the circumstances, it is requested to allow the present petition.

4. The application is opposed by Mr.K.T.Dave, learned Additional Public Prosecutor and has submitted that in the facts and circumstance of the case, as there are serious disputes with regard to ownership of some of the applicants arising out of the land bearing Survey No.54 and those persons have

objected to selling the property as one unit, the learned trial Court has rightly rejected the application. It is also submitted by him that as such the Trust has nothing to do with the property in question as the Trust is neither the owner nor having title over the land and the application is filed at the instance of the petitioners, more particularly, petitioner No.2 who is wife of main accused – Kundanlal Dave, therefore, it is requested to dismiss the present petition.

5. Heard the learned Advocates appearing on behalf of the respective parties.

6. At the outset, it is required to be noted that open plot being Plot No.54 admeasuring 19100 Sq.Yards situated Village – Antanjar, Gandhidham, District- Kutch was initially of the ownership of one Company, who has collected money and said property was purchased from the amount invested by small investors and; that the said land was purchased for starting the project 'Vinus Life Nagar'. There are many investors in the State as well as outside the State of Gujarat and amount involved is more than

Rs.3Crores. It also appears that said open plot is having 237 plots including 5 plots with construction over it and 16 shops in 13 segments. It appears that some plots are handed over to some investors and there is dispute with regard to ownership of those applicants and title over the same and those investors / agents have objected to selling property as one unit by clubbing entire land together. It is also required to be noted at this stage that the petitioners had no locus as they are neither owners of the land in question nor they have got any title over the land in question. As observed by the learned Chief Metropolitan Magistrate, Ahmedabad that there are dispute with regard to ownership of some of the plots which is arising out of Survey No.54(paiki) and unless the dispute is resolved, no permission can be granted. Once the land is under attachment and unless the ownership of the Company and/or others is established, no permission can be granted to sell the property, more particularly as one unit by clubbing the entire land together. In the facts and circumstances of the case, the learned trial Court has rightly rejected the application and the prayer

of the petitioners to defreeze the land in question. It is also required to be noted that there are other investors also and the present petitioners submitted the application only for benefit of some of the investors who were from Kutch District and it was requested that after selling the property in question, the amount realized be distributed amongst investors of Kutch District only, such prayer also cannot be granted at the disadvantage of other investors. As stated above, there are dispute with regard to ownership of the plots inter-se and therefore, the prayer to sell the property as one unit has been rightly rejected by the learned trial Court. It appears to this Court that if the permission is granted, it is likely to create more complications more particularly when the Trust is not the owner of the land in question and petitioner No.2 is wife of main accused – Kundanlal Dave who is alleged to have siphoned huge amount of more than Rs.3 Crores and who is alleged to be master mind. Under the circumstances, it cannot be said that the learned trial Court has committed any error in rejecting the application submitted by the

petitioners.

7. For the reasons stated above, there is no substance in the present petition and same deserves dismissal and is accordingly dismissed.

[M.R.Shah, J.]

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